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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

JOSHUA SIMON, DAVID BARBER, AND
JOSUE BONILLA, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

CITY AND COUNTY OF SAN FRANCISCO,
PAUL MIYAMOTO, IN HIS OFFICIAL
CAPACITY AS SAN FRANCISCO SHERIFF,

Defendants.

CASE NO.: 4:22-cv-05541-JST

(San Francisco County Superior Court, Case
No.: CGC-22-601686)

**PLAINTIFFS' REPLY IN SUPPORT OF
MOTION TO ENFORCE PRELIMINARY
INJUNCTION**

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1 **I. INTRODUCTION**

2 In this Court’s preliminary injunction order (“Order”), Defendants were enjoined from
 3 “imposing or enforcing any search condition broader than that stated in each class member’s
 4 Superior Court order.” ECF 77 at 41. With the word “impos[e],” the Order broadly prohibits the
 5 Sheriff from requiring or compelling a four-way search condition as to criminal defendants for
 6 whom the Superior Court determined the condition unnecessary. Defendants argue they have not
 7 violated the injunction because they have ceased imposing these conditions directly upon electronic
 8 monitoring (“EM”) releasees via the program agreements; instead, they have imposed the condition
 9 vis-à-vis interaction with the Superior Court: *i.e.*, by defying the Court’s Order of release and
 10 detaining releasees while directing the Superior Court to revise its release orders as a pre-condition
 11 for seeing its EM release orders executed. Defendants are well aware that their actions are designed
 12 to contravene the Court’s Order; indeed, their own statements suggest they chose to defy the Order
 13 because they disagree with its reasoning.

14 Because the Order is clear and unambiguous, the Court need not reach the issue of
 15 modification. However, if it decides clarification or modification is appropriate, the pending appeal
 16 does not deprive it of jurisdiction to enter such orders. Nor should it give weight to the Sheriff’s
 17 new argument, that any order requiring it to execute Superior Court release orders that do not
 18 contain its preferred conditions creates a “separation of powers conflict.” ECF 104 at 24.
 19 Throughout this litigation, the Sheriff has repeatedly and consistently characterized itself as acting
 20 solely to implement the San Francisco Superior Court’s release orders. *See, e.g.*, ECF 24 at 8 (“the
 21 SFSO acts, for purposes of pretrial release, solely to implement the criminal court’s directives”);
 22 ECF 31-17, ¶ 3 (“[t]he San Francisco Sheriff’s Office, in implementing the PTEM, is enforcing the
 23 criminal court’s orders”); Appellants’ Opening Br. at 2, *Simon v. City & Cnty. of S. F., et al.*, No.
 24 24-1025 (9th Cir. Mar. 30, 2024), D.E. 23.1 (“Appellants’ Opening Br.”) (“[T]he Sheriff relies on
 25 the validity of orders entered by state courts. He is not – and constitutionally cannot be – in the
 26 position of second guessing these orders”).

27 Now, the Sheriff changes tactics and defends its refusal to carry out individualized EM
 28 release orders on the ground that “[a]s the executive officer in charge of the PTEM Program, the

1 Sheriff is constitutionally empowered . . . to design the program consistent with his criminal justice
 2 reform and public safety priorities.” ECF 104 at 24–25. But Defendant Sheriff has no legal authority
 3 to set conditions of pretrial release or defy the Superior Court’s lawful orders. In unlawfully
 4 detaining class members to express its disagreement with the Superior Court release orders, the
 5 Sheriff ignores both the constitutional role of the court as a neutral adjudicative body in deciding
 6 the appropriate conditions of pretrial release, as well as the Sheriff’s *duty* under state law to carry
 7 out all orders of the court unless they are patently void. Cal. Civ. Proc. Code § 262.1. Plaintiffs
 8 respectfully request that this Court intercede to prevent Defendants from continuing to violate the
 9 plain language of the preliminary injunction, state and federal law, and the rights of class members.

10 II. ARGUMENT

11 A. The Sheriff’s Conduct Violates the Plain and Unambiguous Language of the 12 Preliminary Injunction

13 The language of the preliminary injunction is direct and unambiguous. Under the Order,
 14 Defendants are preliminarily enjoined from:

15 imposing or enforcing any search condition broader than that stated in each class
 16 member’s Superior Court order and from imposing and enforcing the Program
 Rules’ data sharing provision (Rule 11).

17 ECF 77 at 41. “The ‘revised rules subclass,’ consists of all individuals who have in the past been,
 18 are currently, or will in the future be subject to the revised version of the Program Rules . . . put
 19 in[] place [after] May 2023[.]” *Id.* at 27.

20 To establish a violation of the Order, Plaintiffs must show that: 1. as to a member or members
 21 of the revised rules subclass, 2. Defendants imposed or enforced a search condition broader than that
 22 stated in that individual’s Superior Court order. They have sufficiently demonstrated each element.

23 *First*, as to class membership, there is no dispute that four of the six individuals cited in the
 24 Motion to Enforce – Ying Ng, José Chávez, Nathaniel Roye, and Luis Rosales Verde – are members
 25 of the revised rules subclass because they were or are enrolled in EM and subject to the revised EM
 26 Program Rules. *See* ECF 104 at 16–17 (conceding class membership for four cited individuals). The
 27 Sheriff contends that the remaining two, Otis Mason and Jackson Vandeusen, were not class
 28 members because they were never released on the PTEM Program (due to the Sheriff’s refusal to

1 execute the Superior Court’s release orders for them). *Id.* at 17. In making this argument,
 2 Defendants construe the Court’s order regarding class membership too narrowly. The operative
 3 event determining when someone “will in the future be subject to . . . the Program Rules,” ECF 77
 4 at 41, is when the Superior Court orders them released on EM and requires they submit to the EM
 5 Program Rules. *See, e.g.*, ECF 101-13 at 2 (court order to obey “all orders and rules given by any
 6 SFSO employee(s)” and requiring defendants to sign agreement to follow the EM program rules).
 7 Both Mason and Vandeusen were ordered released on EM by the Superior Court, ECF 101 at 9–11,
 8 and these orders rendered them part of the “revised rules subclass” notwithstanding the Sheriff’s
 9 refusal to follow these orders. Accordingly, the Court should find that each of the individuals cited
 10 in the Motion to Enforce met the criteria for class membership at the time of their EM release order.

11 *Second*, as to class members, the terms of the preliminary injunction unambiguously
 12 prohibited the Sheriff from *imposing* a search condition where the Superior Court did not order one.
 13 ECF 77 at 41. This prohibition applies whether the Sheriff imposed such requirements directly on
 14 EM participants or by communicating to the Superior Court that it must impose these conditions to
 15 see its order effectuated. Contrary to Defendants’ narrow interpretation, the plain meaning of the
 16 term “impose” includes where an actor requires or compels acceptance of a particular rule or result.
 17 *See, e.g.*, Cambridge English Dictionary (“to officially force a rule . . . to be obeyed or received” //
 18 “to force someone to accept something”)¹; Oxford Advanced American Dictionary (“to order that a
 19 rule . . . be used”)²; Merriam-Webster Dictionary (“to establish or apply by authority”)³; The
 20 American Heritage Dictionary (“[t]o establish or apply as compulsory”).⁴ Plainly, the Sheriff is
 21 treating a warrantless search condition as compulsory and requiring incorporation by the Superior
 22 Court as a precondition for obeying its release orders, even when it is informed that the Superior
 23 Court has *already* ordered an individual class member released without such conditions. In several

24 ¹ *Impose*, Cambridge Dictionary.org, <https://dictionary.cambridge.org/us/dictionary/english/impose> (last visited on July 18, 2024).

25 ² *Impose*, Oxford Learner’s Dictionaries.com, https://www.oxfordlearnersdictionaries.com/us/definition/american_english/impose (last visited on July 18, 2024).

26 ³ *Impose*, Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/impose> (last visited on July 18, 2024).

27 ⁴ *Impose*, The American Heritage Dictionary.com, <https://www.ahdictionary.com/word/search.html?q=impose> (last visited on July 18, 2024).

1 cases, this conduct directly compelled the Superior Court to revise its release orders for class
 2 members by adding a search condition it had deemed unnecessary. ECF 101 at 6–9 (describing
 3 release orders of Ying Ng and Jose Chávez).

4 Defendants’ construction of the preliminary injunction reflects their desired outcome, not its
 5 actual terms. In effect, they argue they are enjoined from “imposing” a search condition only insofar
 6 as they were informing EM participants directly of such a requirement, but retain their ability to
 7 “impose” the rule as a requirement for executing the Superior Court’s release order. This is not a
 8 distinction reflected anywhere in the Court’s Order, nor is such a reading justifiable under either the
 9 explicit terms of the injunction or its underlying reasoning. The Sheriff’s position is further belied
 10 by the statements of its own legal counsel, who defended the Sheriff’s actions *not* on the ground
 11 that they were consistent with the injunction, but instead by suggesting the Court’s Order was
 12 wrongly decided. ECF 101-5 at 4–5 (“[Y]ou are assuming Tigar’s injunction first is correctly rooted
 13 and second that it will be upheld.”)

14 In sum, this Court should reject the Sheriff’s artificial construction of the Order and find that
 15 its actions coercing the Superior Court to impose the Sheriff’s preferred conditions on class
 16 members where the Court has already ordered otherwise violate the preliminary injunction.

17 **B. Should the Court Deem Clarification or Modification of its Order Appropriate,
 It Has Jurisdiction to Do So**

19 Plaintiffs do not believe the preliminary injunction is ambiguous and have not filed a request
 20 seeking modification of the Order. Should the Court find modification appropriate, however, it “has
 21 inherent authority to modify a preliminary injunction in consideration of new facts.” *A&M Recs., Inc. v. Napster, Inc.*, 284 F.3d 1091, 1098 (9th Cir. 2002); *see also Hawaii v. Trump*, 871 F.3d 646, 654 (9th Cir. 2017) (“The district court has the power to supervise compliance with an injunction
 23 and to ‘modify a preliminary injunction in consideration of new facts.’”) (citation omitted).
 24 Modification may occur in response to a motion to enforce the injunction, provided the opposing
 25 party has notice and an opportunity to respond. *Armstrong v. Brown*, 768 F.3d 975, 979–81 (9th Cir.
 26 2014).
 27

1 Contrary to Defendants' argument, the pending appeal does not deprive the Court of
 2 jurisdiction. Federal Rule of Civil Procedure 62(d) grants courts authority to "suspend, modify,
 3 restore, or grant an injunction on terms for bond or other terms that secure the opposing party's
 4 rights" while an appeal of the order is pending.⁵ Fed. R. Civ. P. 62(d). In applying this rule, the
 5 relevant question is whether the modifications "materially alter the status" of the appeal. *Nat. Res.*
 6 *Def. Council, Inc. v. Sw. Marine Inc.*, 242 F.3d 1163, 1166 (9th Cir. 2001) (holding "minor
 7 adjustments that effectuated the underlying purposes of the original requirements" did not impact
 8 the core questions on appeal). The Ninth Circuit has held that "a district court lacks jurisdiction to
 9 modify the injunction in such manner as to 'finally adjudicate substantial rights directly involved in
 10 the appeal.'" *A&M Recs.*, 284 F.3d at 1099 (citation omitted).

11 Regardless of how broadly Defendants attempt to construe the issues on appeal, the relevant
 12 briefing makes it clear that they have challenged the Court's Order *only* as to warrantless data
 13 sharing. *See* Appellants' Opening Br. at 23–25 (summarizing arguments pertaining wholly to the
 14 location data sharing condition). As such, even if the Court decides to modify the Order's
 15 prohibitions regarding search conditions, that decision would not materially alter the Parties' rights
 16 and legal questions on appeal.

17 Defendants argue that Plaintiffs have made the Court's Order regarding search conditions
 18 relevant by submitting several of the transcripts filed with the Motion to Enforce in the appellate
 19 record. ECF 104 at 21. But Plaintiffs explicitly indicated that the sole purpose of introducing the
 20 transcripts on appeal was to refute the Sheriff's factual assertion that they are "merely following the
 21 superior court's orders" in administering the EM program and imposing program rules. *See*
 22 Plaintiffs-Appellee's Mot. for Judicial Notice at 8, *Simon v. City & Cnty. of S.F.*, No. 24-1025 (9th
 23 Cir. May 10, 2024), D.E. 33.1. Modification of the Order regarding search conditions will not
 24 disrupt the core issues on appeal; if anything, any modification consistent with Plaintiffs' motion
 25 would only force the Sheriff to conform its behavior to the representations it has made on appeal.

26
 27 ⁵ Defendants assert Rule 62 is inapplicable. This is incorrect. *See, e.g., A&M Recs.*, 284 F.3d at
 28 1099 (applying the language of Rule 62(d), then as 62(c), to modification of preliminary injunction
 extending requirements as to enjoined party).

1 Appellants' Opening Br. at 2 ("[T]he Sheriff relies on the validity of orders entered by state courts.
 2 He is not – and constitutionally cannot be – in the position of second guessing these orders").⁶

3 Finally, even if this Court finds that provisions of the preliminary injunction relating to
 4 search conditions are part of the appeal, Plaintiffs merely seek to enforce the clear intent of the
 5 Order and preserve the status quo. *See McClatchy Newspapers v. Cent. Valley Typographical Union*
 6 No. 46, 686 F.2d 731, 734–35 (9th Cir. 1982) (final judgment may be amended while appeal is
 7 pending to preserve the status quo). "The status quo is measured at the time the appeal is filed."
 8 *Nat'l Grange of the Ord. of Patrons of Husbandry v. Cal. State Grange*, 182 F. Supp. 3d 1065, 1072
 9 (E.D. Cal. 2016). To Plaintiffs' knowledge, the Sheriff did not begin refusing to release people
 10 ordered released on EM without a search condition until weeks after the notice of appeal was filed.
 11 *See* ECF 85 (Notice of Appeal filed February 27, 2024); *cf.* ECF 101 at 6 (identifying earliest
 12 known case of Sheriff detaining EM releasee to compel issuance of a search condition as occurring
 13 on or around March 12, 2024). Plaintiffs thus seek to return the Parties to their positions before the
 14 Sheriff's pattern of unlawful detentions to compel modification of Superior Court release orders
 15 began.

16 **C. The Sheriff's Efforts to Impose Search Conditions Found Unnecessary by the
 17 Superior Court Violate State and Federal Law**

18 Defendants argue that construing or modifying the preliminary injunction to prohibit the
 19 Sheriff from requiring a search condition for all EM releases raises "serious separation of powers
 20 and federalism issues." ECF 104 at 22. But they cite no legal authority for their assertion that the
 21 Sheriff can override court-ordered release determinations for its own program prerogatives. Nor can
 22 they, for the law says otherwise. By refusing to carry out the Superior Court's lawful release orders
 23 unless it accedes to the Sheriff's demands, the Sheriff violates state law and creates grave
 24 constitutional issues.

25
 26 ⁶ Defendants' argument that Plaintiffs seek an order "requir[ing] the Sheriff to disregard the
 27 Superior Court's post-May 2023 written orders" is accordingly baseless. ECF 104 at 21. The
 28 purpose of this motion is to compel the Sheriff to *comply* with the Superior Court's individualized
 release orders.

1 It is the role of the court, not the executive branch, to decide when pretrial release is
 2 appropriate and determine necessary conditions of release. *In re Humphrey*, 11 Cal. 5th 135, 154
 3 (2021) (to detain a person pretrial, the *court* must find by “clear and convincing evidence, that no
 4 nonfinancial condition of release can reasonably protect [the government’s] interests); *In re York*, 9
 5 Cal. 4th 1133, 1149–50 (1995) (release conditions “define the degree of liberty that the *court* or
 6 *magistrate*, in his or her discretion, has determined is appropriate to grant to the OR releasee”)
 7 (emphasis added). Moreover, California state law *requires* the Sheriff to execute all orders issued by
 8 the court unless they are patently void. Cal. Civ. Proc. Code § 262.1 (“A sheriff or other ministerial
 9 officer . . . shall execute, all process and orders regular on their face and issued by competent
 10 authority”); *see also Clemons v. City of Long Beach*, 283 F. App’x 487, 488–89 (9th Cir. 2008)
 11 (recognizing that under section 261.1 the Sheriff has a legal duty to execute orders of the court and
 12 may be found liable for failing to do so).⁷ Accordingly, the validity of an order regarding
 13 commitment or release from custody is “ultimately for the courts, not the sheriff, to decide.”
 14 *Vallindras v. Mass. Bonding & Ins. Co.*, 42 Cal. 2d 149, 154 (1954).

15 Federal courts have reached the same conclusion on constitutional grounds. *See, e.g.*,
 16 *Gerstein v. Pugh*, 420 U.S. 103, 112–13 (1975) (requiring judicial determination to justify continued
 17 restraint of liberty following arrest); *Williams v. Dart*, 967 F.3d 625, 629–30 (7th Cir. 2020). In
 18 *Williams*, for instance, the Seventh Circuit held that plaintiffs – criminal defendants who were
 19 ordered admitted to bail subject to Sheriff’s electronic monitoring but who were detained because
 20 the Sheriff disagreed with the court’s release orders – stated a claim for wrongful pretrial detention.
 21 967 F.3d at 633–34. Recognizing that a “core function of the Fourth Amendment is to put neutral
 22 decision-makers between unchecked official discretion and invasions of private liberty by search or
 23 seizure[,]” the Court of Appeal concluded that decisions undercutting the criminal court’s release
 24 orders “were not the Sheriff’s to make.” *Id.*

25 ⁷ Defendants argue the transcripts submitted in support of the motion to enforce “directly undermine
 26 . . . that the Sheriff is incapacitated from setting conditions for the PTEM Program.” ECF 104 at 23.
 27 That the judges of the Superior Court do not acknowledge – and may not be aware – that state law
 28 requires the Sheriff to carry out its orders, and disclaim any ability to compel compliance with their
 individualized orders, does not prove Defendants’ contention that they are *legally authorized* to
 refuse to comply with the Superior Court’s release orders.

1 These authorities make clear that by refusing to carry out the Superior Court's EM release
 2 orders unless they contain the *Sheriff's* preferred condition – and intentionally detaining class
 3 members ordered released to achieve its own ends – the Sheriff is likely violating state and federal
 4 constitutional law. It should not be given further leeway to do so at the expense of the rights and
 5 liberty of class members.

6 The Sheriff avers that in its view, it “would not be feasible to have the PTEM Program
 7 without a warrantless search condition applicable to participants.” ECF 104 at 8. But again, this is
 8 belied by the Sheriff’s own admission, following the Court’s Order, that there were individuals who
 9 remained on EM against whom the Sheriff did not enforce a search condition. ECF 98, ¶¶ 4, 6. It is
 10 further belied by the findings of the Superior Court in cases where it did *not* find a warrantless
 11 search condition appropriate, such as where the purpose of placing an individual on EM was solely
 12 to permit remote GPS tracking and ensure court attendance. *See, e.g.*, ECF 101-2 at 7–9 (declining
 13 to impose search condition where the court was solely concerned with managing flight risk via
 14 electronic monitoring).

15 Finally, Defendants submit varied objections regarding the administrability of an injunction
 16 that prohibits them from conditioning EM release upon a warrantless search condition, even where
 17 the Superior Court determines the condition unnecessary. These arguments can be summarily
 18 dismissed.

19 *First*, Defendants appear to construe Plaintiffs’ motion as requesting this Court determine
 20 “when the Superior Court constitutionally ordered a warrantless search condition.” ECF 104 at 25.
 21 Plaintiffs make no such request. They simply seek enforcement of the principal that the *Sheriff* must
 22 abide by the Superior Court’s orders regarding the necessity or lack thereof of a search condition as
 23 to each individual EM releasee. There is no question that the Sheriff had and will have the
 24 information necessary to comply with any such requirement moving forward. *See* ECF 101 at 6–11
 25 (describing repeated instances in which the Sheriff acknowledged receiving release orders without a
 26 search condition but indicated their refusal to comply).

27 *Second*, contrary to Defendants’ suggestion, Plaintiffs have not requested that this Court
 28 “collaterally invalidat[e]” any Superior Court order. ECF 104 at 24. The preliminary injunction

1 binds only the Sheriff, and Plaintiffs' requests for enforcement are accordingly limited. While the
 2 Court's decision and reasoning may inform how the Superior Court approaches future EM release
 3 orders, the record suggests that the Superior Court is in fact looking to this Court for guidance on
 4 these issues. *See* ECF 101-10 at 4–5 (“I don’t think the Sheriff is under the jurisdiction of the Court.
 5 . . . So I don’t think this Court has any authority to order the Sheriff’s—but that’s subject to larger
 6 litigation at this point.”). Neither federalism nor separation of powers concerns bar the Court from
 7 enforcing and interpreting its own Order, and Defendants’ arguments should be discarded as an
 8 attempt to relitigate issues this Court has already decided. ECF 77 at 19–20.

9 **III. CONCLUSION**

10 For the foregoing reasons, Plaintiffs respectfully request that the Court find Defendants have
 11 violated the preliminary injunction and issue appropriate remedial orders and/or sanctions. If the
 12 Court finds the preliminary injunction does not adequately prohibit the conduct at issue, Plaintiffs
 13 alternatively request that the Court clarify or modify the language of the injunction in accordance
 14 with its stated reasoning and intent.

15
 16 Dated: July 19, 2024

/s/ Emi Young

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